42 U.S.C. §1983 – QUALIFIED IMMUNITY

Mullenix v. Luna, 577 U.S. --- (2015)
Decided November 9, 2015

FACTS: On March 23, 2010, Sgt. Baker (Tulia, TX, PD) followed Leija to a drive-in restaurant, as he had a warrant for Leija's arrest. Baker approached the car and told Leija he was under arrest, but Leija sped off, heading for Interstate 27. Trooper Rodriguez (TX Department of Public Safety) joined in the chase. During an 18 minute chase, Leija made speeds of between 85-110 mph. Twice he called 911 and claimed to have a gun, and threatened "to shoot at police officers if they did not abandon their pursuit." This was passed on to officers, along with a report that Leija might be intoxicated.

Other officers set up tire spikes at three locations. Officer Ducheneaux (Canyon PD) was at the first location Leija was expected to reach. All of the officers had received training on spike strips, "including how to take a defensive position so as to minimize the risk posed by the passing driver." Trooper Mullenix (DPS) responded to that same location and discovered the strip had already been positioned, so he "began to consider another tactic: shooting at Leija's car in order to disable it." He had not been trained in doing so, but passed on his idea to Trooper Rodriguez and his Sergeant. However, before he heard back from his Sergeant, he took a shooting position on the overpass with his rifle. He was apparently instructed by the Sergeant (and could allegedly hear him from that position, although he disputed he heard that order) to stand by and see if the spike strips worked. He was told by Deputy Sheriff Shipman (Randall County, TX) that there was another officer under the underpass. As Leija approached the overpass, Mullenix fired six shots, of which four had been determined to have struck Leija, killing him. The vehicle rolled multiple times.

Leija's representative (Luna) filed suit under 42 U.S.C. §1983, claiming that Mullenix used excessive force against Leija. Trooper Mullenix moved for summary judgment, which was denied. Mullenix appealed and the Fifth Circuit Court of Appeals affirmed the denial. Mullenix requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Is the question of whether a law enforcement officer is entitled to qualified immunity in a deadly force incident dependent upon the specific facts of the case?

HOLDING: Yes

DISCUSSION: The Court began by noting that:

> The doctrine of qualified immunity shields officials from civil liability so long as their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."[1] A clearly established right is one that is

[1] Pearson v. Callahan, 555 U. S. 223 (2009) (quoting Harlow v. Fitzgerald, 457 U. S. 800 (1982)).

> "sufficiently clear that every reasonable official would have understood that what he is doing violates that right."[2] "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate."[3]

Put simply, qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law."[4] The Court continued by noting that the question must be "whether the violative nature of *particular* conduct is clearly established" and must be done under the "specific context of the case, not as a broad general proposition."[5] The Court stated that "such specificity is especially important in the Fourth Amendment context, where the Court has recognized that '[i]t is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts.'"

In this situation, the Fifth Circuit had ruled that the trooper violated "the clearly established rule that a police officer may not "'use deadly force against a fleeing felon who does not pose a sufficient threat of harm to the officer or others'" – but the Court noted that was the precise issue at hand in Brosseau v. Haugen.[6]

The Court emphasized:

> In this case, Mullenix confronted a reportedly intoxicated fugitive, set on avoiding capture through high-speed vehicular flight, who twice during his flight had threatened to shoot police officers, and who was moments away from encountering an officer at Cemetery Road. The relevant inquiry is whether existing precedent placed the conclusion that Mullenix acted unreasonably in these circumstances "beyond debate."

The Court continued by agreeing that "excessive force cases involving car chases reveal the hazy legal backdrop against which Mullenix acted." Certainly, at the moment the shooting occurred, "Leija had led police on a 25-mile chase at extremely high speeds, was reportedly intoxicated, had twice threatened to shoot officers, and was racing towards an officer's location." The Court noted that it had "never found the use of deadly force in connection with a dangerous car chase to violate the Fourth Amendment, let alone to be a basis for denying qualified immunity." Although the traffic was lighter than it was in the cases of Scott v. Harris[7] or Plumhoff v. Rickard,[8] the fleeing drivers in those cases did not express direct threats to shoot officers, "nor were they about to come upon such officers." The Court noted that even though spike strips were in place, that did not guarantee he would not be able to pose a continuing danger to the officers in the immediate area. Whatever could be said about the

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[2] Reichle v. Howards, 566 U. S. ___ (2012).
[3] Ashcroft v. al-Kidd, 563 U. S. 731 (2011).
[4] Malley v. Briggs, 475 U. S. 335 (1986).
[5] Brosseau v. Haugen, 543 U. S. 194 (2004) (per curiam) (quoting Saucier v. Katz, 533 U. S. 194 (2001)).
[6] Id.
[7] 550 U. S. 372 (2007).
[8] 572 U. S. ___ (2014).

wisdom of the choice the trooper made, it was not clear that he'd acted unreasonably under the circumstances. Although no weapon was ever seen, the court found the officers to be "justified in taking Leija at his word when he twice told the dispatcher he had a gun and was prepared to use it."

The Court concluded:

> At the time the trooper fired, "he reasonably understood Leija to be a fugitive fleeing arrest, at speeds over 100 miles per hour, who was armed and possibly intoxicated, who had threatened to kill any officer he saw if the police did not abandon their pursuit, and who was racing towards Officer Ducheneaux's position."

The Court granted Trooper Mullenix's petition and reversed the Fifth Circuit's decision that he was not entitled to qualified immunity.

Full Text of Opinion: **http://www.supremecourt.gov/opinions/15pdf/14-1143_f20h.pdf**